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2:05-CV-01532

11 Attorneys for Plaintiff  
 12 Koninklijke Philips Electronics, N.V.

## UNITED STATES DISTRICT COURT

## DISTRICT OF NEVADA

15 KONINKLIJKE PHILIPS ELECTRONICS  
 16 N.V., a Netherlands Corporation,

Plaintiff,

v.

18 KXD TECHNOLOGY, INC.; ASTAR  
 19 ELECTRONICS, INC.; SHENZHEN KXD  
 20 MULTIMEDIA CO., LTD.; SHENZHEN  
 KAIXINDA ELECTRONICS CO., LTD.;  
 21 KXD DIGITAL ENTERTAINMENT,  
 LTD.; JINGYI LUO, a/k/a JAMES LUO;  
 22 SUNGALE GROUP, INC.; SUNGALE  
 ELECTRONICS (SHENZHEN), LTD.;  
 23 AMOI ELECTRONICS, INC.; AMOI  
 ELECTRONICS CO., LTD.; AMOI  
 24 ELECTRONICS, LTD.; CHINA  
 ELECTRONICS CORPORATION;  
 AMOISONIC ELECTRONICS, INC.;  
 25 INTERNATIONAL NORCENT  
 TECHNOLOGY, INC.; NORCENT  
 26 HOLDINGS, INC.; SHANGHAI  
 HONGSHENG TECHNOLOGY CO.,  
 27 LTD.; SHENZHEN NEWLAND  
 ELECTRONIC INDUSTRY CO., LTD.;  
 28 DESAY A&V (USA), INC.; DESAY A&V  
 SCIENCE & TECHNOLOGY CO., LTD.;

Case No.:

**DOCUMENT FILED UNDER SEAL****DECLARATION OF  
CHRISTOPHER J. HORGAN IN  
SUPPORT OF PLAINTIFF'S EX  
PARTE APPLICATION FOR:**

1. **TEMPORARY RESTRAINING ORDER;**
2. **SEIZURE ORDER; AND**
3. **ORDER TO SHOW CAUSE RE PRELIMINARY INJUNCTION**

DESAY HOLDINGS CO., LTD.; XORO  
ELECTRONICS (SHANGHAI), LTD.;  
SHENZHEN XORO ELECTRONICS CO.,  
LTD.; MAS ELEKTRONIK AG  
CORPORATION; SHENZHEN  
ORIENTAL DIGITAL TECHNOLOGY  
CO., LTD.; and JOHN DOES 1 through 20,  
Defendants.

1 I, Christopher J. Horgan, under penalty of perjury, state the following:

2 1. I am a Senior Intellectual Property Counsel for Philips Intellectual  
3 Property & Standards, 1109 McKay Drive, Mail Stop SJ41, San Jose, California,  
4 95131. I have personal knowledge of the facts set forth in this declaration.

5 2. I make this declaration in support of Koninklijke Philips Electronic  
6 N.V.'s ("Philips") Ex Parte Application for a Temporary Restraining Order, Seizure  
7 Order, and Order to Show Cause Re: Preliminary Injunction.

8 3. In my role as Senior Intellectual Property Counsel, I am responsible for  
9 identifying potential licensees for the Philips optical disc patent portfolios, including  
10 the digital versatile disc ("DVD") patent packages and trademark licenses, contacting  
11 and negotiating with prospective licensees, ensuring compliance with license terms,  
12 and pursuing patent and trademark litigation against infringers and counterfeiters.

13 **Background of Philips and the DVD+R/+RW Technology**

14 4. Philips is a corporation of the Netherlands having its principal place of  
15 business in Amsterdam, The Netherlands. Philips is one of the world's biggest  
16 electronics companies with facilities in over 60 countries. The United States is a key  
17 market for Philips, accounting for one-third (\$8.9 billion) of the company's worldwide  
18 sales in 2003. Philips along with other corporations contributed to perfecting the  
19 DVD technology and standardizing it for universal consumer use and application,  
20 worldwide.

21 5. The DVD technology makes it possible for content (or data) to be stored  
22 in larger amounts than was previously commercially available, in a smaller medium.  
23 A single, one-sided, DVD disc can hold about 4.7 gigabytes, the equal of 13 CD discs.

24 6. There are two types of recordable DVD formats commonly used which  
25 are distinguished by a plus "+" or a minus "-." The DVD-R/-RW format is different  
26 than the DVD+R/+RW format. Philips, and its partners, developed the DVD+R/+RW  
27 format with the goal of creating a recordable optical disc that is compatible with past  
28 and present DVD players and computer DVD drives. DVD+R/+RW devices are

1 commonly made as part of a computer's internal drive, as an external drive to be  
2 connected to a computer (known as "after market"), and as your typical home-theater  
3 component (known as a "recorder"). The compatibility of the DVD+R/+RW format is  
4 so versatile that you can record data on a DVD+R disc and DVD+RW disc and play  
5 them on any DVD player or DVD drive, and advanced editing of DVD+R discs and  
6 DVD+RW discs can be done on a computer, and then played on a conventional DVD  
7 player.

8         7. To protect the integrity of the marketplace and consumers as well as  
9 Philips and its licensees, a trademark is affixed upon Philips' licensed DVD+R/+RW  
10 products to assure the consumer that the articles are genuine and are compatible with  
11 products bearing the trademark.

#### 12                   **Philips' Federally Registered DVD+RW Trademark**

13         8. Philips licenses the DVD+R/+RW technology as well as the trademarks  
14 that are associated with such products to original equipment manufacturers ("OEMs").  
15 Philips is the owner of the DVD+ReWritable & Design trademark (the "DVD+RW"  
16 mark), which is registered on the Principal Register of the United States Patent &  
17 Trademark Office, Reg. No. 2,610,036.

18         9. A true and correct copy of the certificate of registration for the  
19 DVD+RW mark is attached hereto as **Exhibit 1**.

20         10. The DVD+RW mark, originally registered to Sony Kabushiki Kaisha  
21 Corporation, was assigned to Philips on June 20, 2003. A true and correct copy of the  
22 assignment is attached hereto as **Exhibit 2**.

23         11. The DVD+RW mark is used on DVD+R/+RW recorders, DVD+R/+RW  
24 computer disc drives (internal and external), and DVD+RW discs. True and correct  
25 copies of authorized products bearing the DVD+RW mark are attached hereto as  
26 **Exhibit 3**.

27         12. Prior to affixing the mark on a DVD+R/+RW product, OEMs first enter  
28 into a patent license agreement with Philips for a specific DVD+R/+RW technology.

1 The licensee also enters into a Logo Agreement with Philips and completes and  
2 returns a Confirmation Card to Philips.

3 13. True and correct copies of the DVD+R/+RW Logo Guide, the DVD+RW  
4 Logo Agreement, and the Confirmation Card regarding the DVD+R/+RW logo files  
5 are attached hereto as **Exhibit 4**.

6 14. The logo is meant to represent to the consumer that Philips has  
7 authorized the product.

8 15. A licensee that does not comply with the rules set forth in the logo guide  
9 may lose its right to use the mark.

10 **Public Recognition and Advertising of the DVD+RW mark**

11 16. All of Philips' DVD+R/+RW patent license agreements provide for the  
12 use of trademarks. Licensees, therefore, affix the appropriate marks, including the  
13 DVD+RW mark, on their DVD+R/+RW products, packaging, labels, and containers.  
14 Over the years, the result of this practice has developed broad and worldwide public  
15 recognition in these marks, especially in the United States.

16 17. In 2004 and the first quarter of 2005, over 2.5 million DVD+RW discs  
17 were sold in the United States. From 2002 through 2004, there were over 1.2 million  
18 DVD+R/+RW recorders sold in the United States, and it is estimated that another 1.4  
19 million will be sold in 2005. In 2005, it is estimated that over 2 million external  
20 DVD+R/+RW computer drives were sold in the United States. Philips' yearly  
21 advertising, promotional, and market development budget for discs sold under the  
22 DVD+RW mark has averaged between \$500,000 to \$1,000,000.

23 18. Through its long and continuous use of the DVD+RW mark as a source  
24 identifier, the substantial sales and advertising of the mark, and Philips' successful  
25 licensing program, Philips has achieved public recognition for the purpose of  
26 identifying the quality and characteristics of the associated DVD+R/+RW products  
27 and to help consumers protect themselves from counterfeit and "knock-off" products.

28 ///



**Recording the DVD+RW Mark with  
United States Custom and Border Protection**

19. A true and correct copy of a published article dated April 19, 2004, from the DVD Recordable website about China's global export of DVD products is attached hereto as **Exhibit 5**.

20. A true and correct copy of the Customs Recordation is attached hereto as **Exhibit 6**.

21. To Philips' knowledge, United States Customs and Border Patrol has seized 11,418 counterfeit DVD+R/+RW recorders bearing the DVD+RW mark, being exported from China by Apex (Jiangsu) Digital Co., Ltd. to the United States, from August 25, 2003, to September 3, 2003.

**The Defendants and Their Counterfeit Products**

22. In the past, unlicensed products bearing the DVD+RW mark ("Counterfeit Products") have been offered for sale at retail establishments, such as, Wal-Mart, Target, Amazon.com, and Sears. Representatives from these retailers will be present at the International Consumer Electronic Show ("CES") in 2006. The named defendants are registered as exhibitors at the upcoming 2006 CES. In anticipation of the introduction of Counterfeit Products, Philips sent letters in December 2005 to each of these defendants notifying them of Philips' proprietary interest and ownership in the DVD+RW mark and warning them not to exhibit or offer for sale Counterfeit Products at the 2006 CES.

**The KXD Defendants**

23. Shenzhen KXD Multimedia Co. Ltd. ("Shenzhen KXD"), KXD Technology, Inc. ("KXD Technology"), and Astar Electronics, Inc. ("Astar") have a principle place of business at 5101 Commerce Dr., Baldwin Park, California, 91706. Upon information and belief, Shenzhen KXD, KXD Technology, Astar and their related companies, Shenzhen Kaixinda Electronics Co., Ltd. and KXD Digital Entertainment, Ltd. f/k/a KXD Digital Entertainment Pte. Ltd. f/k/a KXD Electronics

1 Pte. Ltd., and Jingyi Luo, also known as James Luo, an individual, (collectively  
 2 “KXD”) have manufactured, imported, distributed, advertised, offered for sale and/or  
 3 sold counterfeit DVD+R/+RW recorders bearing the DVD+RW mark. KXD has  
 4 never been a Philips’ recorder licensee. KXD exhibited and offered for sale  
 5 Counterfeit Products at the 2005 CES, namely DVD+R/+RW recorders. I  
 6 admonished KXD in person at the 2005 CES and instructed it to discontinue its  
 7 manufacture, distribution, offering for sale and sale of its DVD+R/+RW recorders and  
 8 any other unauthorized products that bear the DVD+RW mark.

9 24. Shenzhen KXD is a registered exhibitor at the 2006 CES. A true and  
 10 correct copy of a printout from the CES exhibitor directory of the CES website is  
 11 attached hereto as **Exhibit 7**. True and correct copies of letters dated December 14,  
 12 2005, from Philips’ attorney to KXD and its affiliates, sent via Federal Express, and  
 13 the proof of receipt of one of those letters are attached hereto as **Exhibit 8**. KXD has  
 14 not responded to these letters.

15 25. I have recently learned from Philips’ investigator that KXD will be  
 16 offering for sale product bearing the DVD+RW mark at the 2006 CES. True and  
 17 correct copies of photographs of KXD’s product, model DVR-2100, bearing the  
 18 DVD+RW mark, that I received from Philips’ counsel are attached hereto as **Exhibit**  
 19 **9**. After examining these photographs, it is clear to me that the DVR-2100 depicted  
 20 therein bears a counterfeit of Philips’ DVD+RW mark.

### 21 **The Sungale Defendants**

22 26. Sungale Group, Inc. (“Sungale Group”) has a principle place of business  
 23 at 13358 Monte Vista Avenue, Chino, California, 91710. Upon information and  
 24 belief, Sungale Group, Inc., and its related entity, Sungale Electronics (Shenzhen),  
 25 Ltd. (collectively, “Sungale Group”), have manufactured, imported, distributed,  
 26 advertised, offered for sale and/or sold counterfeit DVD+R/+RW recorders bearing  
 27 the DVD+RW mark. Sungale has never been a Philips’ recorder licensee.

28 27. Sungale Group is a registered exhibitor at the 2006 CES. A true and



1 correct copy of a printout from the CES exhibitor directory of the CES website is  
2 attached hereto as **Exhibit 10**. True and correct copies of letters dated December 16,  
3 2005, from Philips' attorney to Sungale, sent via Federal Express, and the proof of  
4 receipt of one of these letters are attached hereto as **Exhibit 11**. A true and correct  
5 copy of a letter dated December 19, 2005, from Sungale Group to Philips' counsel is  
6 attached hereto as **Exhibit 12**.

7 28. I have recently learned from Philips' investigator that Sungale will be  
8 offering for sale product bearing the DVD+RW mark at the 2006 CES. A true and  
9 correct copy of an e-mail message from Sungale's representative to Philips'  
10 investigator, dated December 22, 2005, is attached hereto as **Exhibit 13**. True and  
11 correct copies of photographs of Sungale's DVD+R/+RW recorder, model DR-601,  
12 and an enlarged photocopy of the business card of David Peng received from Philips'  
13 counsel are attached hereto as **Exhibit 14**. After examining these photographs, it is  
14 clear to me that the Sungale products depicted therein bear a counterfeit of Philips'  
15 DVD+RW mark.

#### 16 The Amoi Defendants

17 29. Amoi Electronics Company, Ltd. ("Amoi Electronics"), has a principle  
18 place of business at 17777 Center Court Drive, Suite 260, Cerritos, California, 90703.  
19 Upon information and belief, Amoi Electronics and its related entities, Amoi  
20 Electronics, Inc., Amoi Electronics, Ltd., China Electronics Corporation, and  
21 Amoisonic Electronics, Inc. (collectively "Amoi"), have manufactured, imported,  
22 distributed, advertised, offered for sale and/or sold counterfeit DVD+R/+RW  
23 recorders bearing the DVD+RW mark. Amoi has never been a Philips' recorder  
24 licensee. A true and correct copy of a letter, dated December 23, 2004, from Philips  
25 to Amoisonic by Federal Express, notifying Amoi that Philips is the owner of the  
26 DVD+RW mark and that Amoisonic's manufacture, distribution, offering for sale  
27 and/or sale of unlicensed product bearing the DVD+RW mark is a violation of federal  
28 law is attached hereto as **Exhibit 15**. Despite the December 23, 2004 letter, I

1 observed Amoisonic exhibiting and offering for sale Counterfeit Products bearing  
2 Philips' DVD+RW mark at the 2005 CES.

3 30. Amoi Electronics is a registered exhibitor at the 2006 CES. A true and  
4 correct copy of a printout from the CES exhibitor directory of the CES website is  
5 attached hereto as **Exhibit 16**. True and correct copies of letters dated December 14,  
6 2005, from Philips' attorney to Amoi, sent via Federal Express, and the proofs of  
7 receipt of said letters are attached hereto as **Exhibit 17**. Amoi has not responded to  
8 these letters.

9 31. The e-mail of David Peng at Sungale, attached hereto as **Exhibit 13**, was  
10 signed on behalf of Amoi and Sungale at the same address located in Chino,  
11 California. Based upon my prior observation of Amoi at the 2005 CES, the  
12 representations of Sungale of the products it will exhibit at the 2006 CES, and the  
13 affiliation between Amoi and Sungale, I believe that Amoi will exhibit DVD+R/+RW  
14 recorders bearing the DVD+RW mark.

### 15 **The Norcent Defendants**

16 32. International Norcent Technology, Inc., ("International Norcent") is a  
17 California Corporation and has a principle place of business at 550 Cliffside Dr., San  
18 Dimas, California, 91773. Upon information and belief, International Norcent and its  
19 related entities, Norcent Holdings, Inc., Norcent Hong Kong Co., Ltd., and Shanghai  
20 Hongsheng Technology Co., Ltd. (collectively, "Norcent"), have manufactured,  
21 imported, distributed, advertised, offered for sale and/or sold counterfeit  
22 DVD+R/+RW recorders bearing the DVD+RW mark. Norcent has never been a  
23 Philips' recorder licensee. A true and correct copy of a letter, dated December 23,  
24 2004, from Philips to Norcent by Federal Express, notifying Norcent that Philips is the  
25 owner of the DVD+RW mark and that Norcent's manufacture, distribution, offering  
26 for sale and/or sale of unlicensed product bearing the DVD+RW mark is a violation of  
27 federal law is attached hereto as **Exhibit 18**.

28 33. International Norcent (listed under the name Norcent) is a registered

1 exhibitor at the 2006 CES. A true and correct copy of a printout from the CES  
2 exhibitor directory of the CES website is attached hereto as **Exhibit 19**. True and  
3 correct copies of letters dated December 14, 2005, from Philips' attorney to Norcent,  
4 sent via Federal Express, and the proofs of receipt of said letters are attached hereto as  
5 **Exhibit 20**.

6 34. A true and correct copy of a letter dated December 16, 2005, from  
7 Dennis Robinson, CFO of Norcent, to Philips' counsel is attached hereto as **Exhibit**  
8 **21**. Mr. Robinson, responding on behalf of Norcent to the December 14, 2005 letter,  
9 writes that Norcent "will not be displaying and (sic) DVD products at CES."

10 35. Despite Mr. Robinson's statement, I have recently learned from Philips'  
11 investigator that Norcent will be offering for sale DVD+R/+RW recorders and that  
12 Norcent is expecting a shipment of new DVD+R/+RW recorders for the 2006 CES. A  
13 true and correct copy of Norcent's DVD+R/+RW recorder, model number DVR3000  
14 as obtained from its website bearing the DVD+RW mark is attached hereto as **Exhibit**  
15 **22**. Based upon my prior experience with Norcent at the 2005 CES and the website  
16 image of Norcent's DVD+R/+RW recorder bearing the counterfeit DVD+RW mark, I  
17 believe that Norcent will exhibit the DVD+R/+RW recorders bearing a counterfeit of  
18 Philips' DVD+RW mark at the 2006 CES.

### 19 **The Newland Defendants**

20 36. Shenzhen Newland Electronic Industry Co. Ltd. ("Newland"), has a  
21 principle place of business at Bldg. 1-2, Zhaofuda Industrial Zone, Hong Qiao Tou  
22 Village, Songgang Town, Baoan District, Shenzhen, Guangdong, 518105, Peoples  
23 Republic of China. Upon information and belief, Newland has manufactured,  
24 imported, distributed, advertised, offered for sale and/or sold counterfeit  
25 DVD+R/+RW recorders bearing the DVD+RW mark. Newland has never been a  
26 Philips' recorder licensee. A true and correct copy of a letter, dated December 23,  
27 2004, from Philips to Newland by Federal Express, notifying Newland that Philips is  
28 the owner of the DVD+RW mark and that Newland's manufacture, distribution,

1 offering for sale and/or sale of unlicensed product bearing the DVD+RW mark is a  
2 violation of federal law is attached hereto as **Exhibit 23**. Despite the December 23,  
3 2004 letter, I observed Newland exhibiting and offering for sale Counterfeit Products  
4 bearing Philips' DVD+RW mark at the 2005 CES.

5 37. Newland is a registered exhibitor at the 2006 CES. A true and correct  
6 copy of a printout from the CES exhibitor directory of the CES website is attached  
7 hereto as **Exhibit 24**. A true and correct copy of a letter dated December 14, 2005,  
8 from Philips' attorney to Newland and its affiliates, sent via Federal Express, and the  
9 proof of receipt of said letter are attached hereto as **Exhibit 25**. Newland has not  
10 responded to this letter.

11 38. I have recently learned from Philips' investigator that Newland will be  
12 offering for sale two DVD+R/+RW recorders, model numbers DVR-4001 and DHR-  
13 5001, bearing the DVD+RW mark at the 2006 CES. True and correct copies of the  
14 images of the two DVD+R/+RW recorders sent from Newland and received by  
15 Philips' investigator bearing the DVD+RW mark are attached hereto as **Exhibit 26**.  
16 After examining these images, it is clear to me that the Newland products depicted  
17 therein bear a counterfeit of Philips' DVD+RW mark.

### 18 **The Desay Defendants**

19 39. Desay A&V Science & Technology Co. Ltd. ("Desay A&V"), has a  
20 principle place of business at Desay 3rd Industry Zone, Chenjiang, Huizhou City,  
21 Guangdong Province, Peoples Republic of China. Upon information and belief,  
22 Desay A&V and its related entities, Desay A&V (USA), Inc., and Desay Holdings  
23 Co., Ltd. (collectively "Desay"), have manufactured, imported, distributed, advertised,  
24 offered for sale and/or sold counterfeit DVD+R/+RW recorders bearing the  
25 DVD+RW mark. Desay has never been a Philips' recorder licensee.

26 40. Desay A & V is a registered exhibitor at the 2006 CES. A true and  
27 correct copy of a printout from the CES exhibitor directory of the CES website is  
28 attached hereto as **Exhibit 27**. A true and correct copy of a letter dated December 14,



1 2005, from Philips' attorney to Desay, sent via Federal Express, and the proof of  
2 receipt of said letter are attached hereto as **Exhibit 28**. Desay has not responded to  
3 this letter.

4 41. True and correct copies of images depicting two Desay DVD+R/+RW  
5 recorders, model numbers DS-R80 and DS-R85, as obtained from its website are  
6 attached hereto as **Exhibit 29**. After examining these images, it is clear to me that the  
7 Desay products depicted therein bear a counterfeit of Philips' DVD+RW mark.

#### 8 **The Xoro Defendants**

9 42. Xoro Electronics (Shanghai) Ltd. ("Xoro Electronics"), has a principle  
10 place of business at 2F Bldg. B, 489 Songtao Rd., Pudong New District, Shanghai  
11 201203, Peoples Republic of China. Upon information and belief, Xoro Electronics  
12 and its related entities, Xoro Shenzhen Electronics Co., Ltd., and MAS Elektronik AG  
13 Corporation (collectively "Xoro"), have manufactured, imported, distributed,  
14 advertised, offered for sale and/or sold counterfeit DVD+R/+RW recorders bearing  
15 the DVD+RW mark. Xoro has never been a Philips' recorder licensee.

16 43. Xoro Electronics is a registered exhibitor at the 2006 CES. A true and  
17 correct copy of a printout from the CES exhibitor directory of the CES website is  
18 attached hereto as **Exhibit 30**. True and correct copies of letters dated December 14,  
19 2005, from Philips' attorney to Xoro, sent via Federal Express, and the proof of  
20 receipt of one of those letters are attached hereto as **Exhibit 31**. Xoro has not  
21 responded to this letter.

22 44. True and correct copies of images depicting the Xoro DVD+R/+RW  
23 recorder, model number HSD R545, as obtained from its website are attached hereto  
24 as **Exhibit 32**. After examining these images, it is clear to me that the Xoro product  
25 depicted therein bears a counterfeit of Philips' DVD+RW mark.

#### 26 **Shenzhen Oriental Digital Technology Co. Ltd.**

27 45. Shenzhen Oriental Digital Technology Co. Ltd. ("Oriental Digital"), has  
28 a principle place of business at Meilan Industrial Park, Xuegang North Road No. 1,



1 Buji, Longgang District, Shenzhen 518829, Peoples Republic of China. Oriental  
2 Digital has never been a Philips' recorder licensee.

3 46. Oriental Digital is a registered exhibitor at the 2006 CES. A true and  
4 correct copy of a printout from the CES exhibitor directory of the CES website is  
5 attached hereto as **Exhibit 33**. True and correct copies of letters dated December 14,  
6 2005, from Philips' attorney to Oriental Digital and its affiliates, sent via Federal  
7 Express, and the proof of receipt of said letter are attached hereto as **Exhibit 34**.  
8 Oriental Digital has not responded to this letter.

9 47. A true and correct copy of an image depicting a Oriental Digital  
10 DVD+R/+RW recorder, model number DVR-2000 obtained from its website is  
11 attached hereto as **Exhibit 35**. After examining this image, it is clear to me that the  
12 Oriental Digital product depicted therein bears a counterfeit of Philips' DVD+RW  
13 mark.

14 **Defendants' Presence at the 2006 CES, in Las Vegas, Nevada,**  
15 **from January 5, 2006, through January 8, 2006.**

16 48. At the 2005 CES, there were 146,240 attendees, of which 43,393 were  
17 exhibitors, 40,672 were senior level executives, 16,561 were the president/CEO/owner  
18 of a retail industry company, 257 were from Fortune 500 companies (about one-half),  
19 and 79 were from Fortune 100 companies. According to eBrain Market Research (a  
20 service of CES), CES represents an estimated 95% (\$107 billion) of the industry's  
21 \$113.5 billion buying power. CES, therefore, delivers crucial access with the  
22 industry's decision-makers

23 49. A true and correct copy of the 2005 CES Preliminary Attendee Highlight  
24 Document from the CES website, outlining last year's attendees' demographics, is  
25 attached hereto as **Exhibit 36**.

26 50. True and correct copies of the 2006 CES Exhibitor Overview, the 2006  
27 CES Digital Entertainment overview, and the 2006 CES Video overview are attached  
28 hereto as **Exhibit 37**.

1           51. A true and correct copy of the Application and Exhibit Space Contract  
2 for the 2006 CES (as taken from its website) is attached hereto as **Exhibit 38**.

3 Paragraph 39 of the application requires that each exhibitor own the intellectual  
4 property rights used in the promotion and/or exhibition of its products.

5           52. A true and correct copy of the Rule and Regulations for the 2006 CES (as  
6 taken from its website) is attached hereto as **Exhibit 39**. Under the heading “Exhibit  
7 Booth Display Regulations” (page three), the first bullet point states the following:  
8 “**NEW THIS YEAR!** Exhibitors must own or have the rights to use all intellectual  
9 property (patent, trademark, copyright, etc.) employed by them to promote their  
10 product at CES” (emphasis in original).

11           53. The defendants’ unlawful activities will cause irreparable injury to  
12 Philips. The defendants’ Counterfeit Products will be displayed in the same vicinity  
13 as Philips’ and its licensees’ authorized products. By offering for sale their  
14 Counterfeit Products, the defendants will likely cause injury to Philips and its  
15 licensees and prevent them from pursuing potential business opportunities and  
16 relationships at the 2006 CES.

17                   **A Temporary Restraining Order and Seizure Order Are**  
18                   **Necessary To Prevent The Defendants From Importing and**  
19                   **Distributing Large Quantities of Counterfeit Products**

20           54. Philips seeks to address the problem before the defendants are able to  
21 introduce their Counterfeit Products to the CES attendees and secure distribution deals  
22 for their Counterfeit Products. Preventing the defendants from securing future  
23 business or distribution deals for their Counterfeit Products will foster and protect the  
24 integrity and purpose of the CES, which is to bring together and facilitate lawful  
25 business and innovation in the field of consumer electronics. Otherwise, these  
26 defendants will return to their foreign homelands with distribution and retail contracts  
27 in hand and begin manufacturing and distributing Counterfeit Products to the United  
28 States.

**Actual Confusion**

55. I periodically will receive a telephone call from importers and/or retailers that believed they had purchased authorized products bearing the DVD+RW mark but, instead, had purchased Counterfeit Products from unauthorized manufacturers.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that all of the foregoing is true and correct.

Executed on December 27<sup>th</sup>, 2005, at San Jose, California.



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Christopher J. Horgan